



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460**

**OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD**

August 8, 2011

MEMORANDUM

SUBJECT: Formation of the SAB Scientific and Technological Achievement Awards (STAA) Committee Augmented for the Review of Nominations for the FY 2011 STAA Awards

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EPA's STAA Program was established in 1980 to recognize Agency scientists and engineers who published their work in the peer-reviewed literature. The STAA Program is an annual Agency-wide competition to promote and recognize scientific and technological achievements by EPA employees. The STAA program is administered and managed by EPA's Office of Research and Development (ORD). ORD requested EPA's Science Advisory Board (SAB) to review scientific publications nominated by EPA managers and make recommendations to the Administrator for STAA awards.

A STAA Committee was formed in June 2009 to provide advice to the Administrator (through the chartered Board) regarding STAA nominations for 2009, 2010 and 2011. To review the STAA 2010 and 2011 nominations, the SAB Staff Office augmented the 2009-2011 STAA Committee with additional experts in May 2010. To review the STAA 2011 nominations, the SAB Staff Office is further augmenting the 2009-2011 STAA Committee with additional experts.

This memorandum documents the process and steps taken to augment the STAA Committee.
This memorandum addresses:

- (A) The type of advisory body that will be used to conduct the advisory activity and the types of expertise needed to address the general charge;
- (B) Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic concerning which advice is to be given;
- (C) How regulations concerning “appearance of a lack of impartiality,” pursuant to 5 C.F.R. § 2635.502, apply to members of the augmented Committee; and
- (D) How individuals were selected for the augmented Committee.

DETERMINATIONS:

(A) The type of advisory body that will be used to conduct the advisory activity and the types of expertise needed to address the general charge

Due to changes in the availability of committee members, the SAB Staff Office sought nationally and internationally recognized scientists and engineers to augment expertise on the expert *ad hoc* 2009-2011 STAA Committee. The expertise sought was within the following fields: environmental and human health sciences, ecology, risk assessment, environmental engineering, environmental lifecycle or systems analysis, and in environmental sustainability fields such as in green chemistry, green technologies, and green building design.

(B) Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic concerning which advice is to be given

(a) Identification of parties who are potentially interested in or may be affected by the topic concerning which advice is to be given: The principal interested and affected parties for this topic are: (1) authors of STAA nominations; and (2) EPA and the scientific community at large.

(b) Conflict of interest considerations: For Financial Conflict of Interest (COI) issues, the basic 18 U.S.C. § 208 provision states that: “An employee is prohibited from participating *personally and substantially* in an official capacity in any *particular matter* in which he, to his knowledge, or any person whose interests are imputed to him under this statute has a *financial interest*, if the particular matter will have a direct and predictable effect on that interest [emphasis added].” For a conflict of interest to be present, all elements in the above provision must be present. If an element is missing the issue does not involve a formal conflict of interest; however, the general provisions in the appearance of impartiality guidelines must still apply and need to be considered.

(i) Does the general charge to the STAA Committee augmented for review of nominations for the FY 2011 STAA Awards involve a particular matter? A “particular matter” refers to matters that “...will involve deliberation, decision, or action that is focused upon the interests of specific people, or a discrete and identifiable class of people.” It does not refer to “...consideration or adoption of broad policy options directed to the interests of a large and diverse group of people.” [5 C.F.R. § 2640.103 (a)(1)]. A particular matter of general applicability means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. [5 C.F.R. § 2640.102 (m)]. Additionally, 5 CFR 2637.102(a)(7) defines a particular matter involving specific parties to mean any judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, investigation, change, accusation, arrest or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest.

The SAB Staff Office has determined that the work that this committee will perform will be a particular matter of specific applicability affecting specific parties (i.e., the authors of the papers to be reviewed), because the resulting advice will be part of a deliberation and the advice would involve the interests of individuals considered for awards.

(ii) Will there be personal and substantial participation on the part of augmented Committee members? Participating personally means direct participation in this review. Participating substantially refers to involvement that is of significance to the matter under consideration. [5 C.F.R. § 2640.103(a)(2)]. For this review, the SAB Staff Office has determined that committee members will be participating personally in matters presented to them through attendance at meetings, teleconferences and other means. Since committee members will be providing the Agency with advice and recommendations on ORD’s hydrofracking research efforts, and such advice is expected to directly influence whether and how ORD will fund specific research within this topic area, participation in this review will be substantial.

For this review, the SAB Staff Office has determined that committee members will be participating personally in matters presented to them through attendance at meetings, teleconferences and other means. Since committee members will be providing the Agency with advice and recommendations for awards, participation in this review will be substantial.

(iii) Will there be a direct and predictable effect on augmented Committee members’ financial interest? A direct effect on a participant’s financial interest exists if “...a close causal link exists between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. ...A particular matter does not have a direct effect ...if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy is not considered to have a direct effect.” [5 C.F.R. § 2640.103(a)(i)]. A predictable effect exists if, “...there is an actual, as opposed to a speculative, possibility that the matter will affect the financial interest.” [5 C.F.R. § 2640.103(a)(ii)].

Although the work that this committee will perform will have a direct and predictable financial effect on individuals (since committee advice may result in monetary awards to authors of papers reviewed by the committee), no committee members are the authors of papers considered for awards. Therefore, the SAB Staff Office has determined that there is no direct and predictable effect on any committee member's financial interests.

(C) How regulations concerning "appearance of a lack of impartiality," pursuant to 5 C.F.R. § 2635.502, apply to members of the augmented Committee

The Code of Federal Regulations at 5 C.F.R. § 2635.502(a) states that:

"Where an employee knows that a **particular matter** involving specific parties is likely to have a **direct and predictable effect** on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee."

Further, § 2635.502(a)(2) states that:

"An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter."

Each potential member was evaluated against the 5 C.F.R. 2635(a)(2) general requirements regarding an appearance of a lack of impartiality. Information used in this evaluation was provided by prospective committee members through their submission of a confidential financial disclosure form (EPA Form 3110-48, "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency").

To ascertain whether there is any appearance of a lack of impartiality, the following four questions were posed to each prospective member of the SAB STAA Committee augmented for review of nominations for the FY 2011 STAA Awards with respect to the forthcoming charge for the augmented Committee:

(a) Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned?

(b) Have you had any previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement.

(c) Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities.

(d) Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements.

Upon review of submitted financial disclosure forms and the responses to the above four questions, the SAB Staff Office has determined that there are no financial conflicts of interest associated with the 2011 STAA Committee members. However, we have identified several members who have agreed to recuse themselves from discussion and deliberation on selected STAA nominations to avoid any appearance of a lack of impartiality.

(D) How Individuals Were Selected For The Augmented Committee:

The SAB Staff Office identified eleven nationally and internationally recognized scientists and engineers to augment expertise on the STAA Committee for review of nominations for the FY 2011 STAA Awards. On May 13, 2011 the SAB Staff Office posted on the SAB Web site a list of eleven candidates for the FY 2011 STAA Committee for public comment. The SAB Staff Office received no public comments on this list of candidates.

The SAB Staff Office Director, taking all factors into account, makes the final decision about the membership for the SAB STAA Committee. Specific criteria to be used in evaluating an individual committee member include: (a) scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in advisory committees; and, for the Committee as a whole, (f) diversity and balance of scientific expertise and viewpoints.

On the basis of the above-specified criteria, the members of the STAA 2011 Committee for review of nominations for the FY 2011 STAA Awards are as follows:

Dr. Taylor Eighmy, University of New Hampshire, **CHAIR**
Dr. Fred Benfield, Virginia Polytechnic Institute & State University (Virginia Tech)
Dr. James Bus, The Dow Chemical Company
Dr. Peter Chapman, Golder Associates Ltd.
***Dr. George Daston**, Procter & Gamble
***Dr. Joel Ducoste**, North Carolina State University
Dr. John P. Giesy, University of Saskatchewan
Dr. Cynthia Harris, Florida A & M University
Dr. Dale Hattis, Clark University
***Dr. Arpad Horvath**, University of California – Berkeley
Dr. Michael T. Kleinman, University of California, Irvine
Dr. Wayne Landis, Western Washington University
***Dr. Thomas W. La Point**, University of North Texas
Dr. Desmond F. Lawler, University of Texas at Austin
Dr. Reid Lifset, Yale University
Dr. Randy Maddalena, Lawrence Berkeley National Laboratory
Dr. Paulette Middleton, Panorama Pathways
Dr. Fred J. Miller, Independent Consultant
Dr. John R. Smith, Alcoa Inc.
Dr. Robert Twiss, University of California, Berkeley
Dr. Yousheng Zeng, Providence Engineering and Environmental Group LLC
Dr. Barbara Zielinska, Desert Research Institute

*Augmented members

Concurred:

/Signed/
Vanessa Vu, Ph.D.
Staff Director
EPA Science Advisory Board (1400F)

August 8, 2011
Date